

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

City of Columbus, Ohio,                     :  
                    Plaintiff,                     :       Case No. 2:08-cv-0172  
                    v.                             :       JUDGE GRAHAM  
Harriett Mann, et al.,                     :  
                    Defendants.                     :

REPORT AND RECOMMENDATION

On February 22, 2008, this Court received a notice of removal from Yvonne Webb-Lewis and Sidney T. Lewis, two of the four individual defendants named in an action originally filed in the Franklin County Municipal Court, Environmental Division. See Verified Complaint for Injunctive Relief attached as Exhibit A to Motion for Leave to Proceed in Forma Pauperis (doc. #1). On February 26, 2008, the Lewises filed an amended notice of removal. Because the Lewises have requested leave to proceed in forma pauperis, this action is before the Court for an initial screening pursuant to 28 U.S.C. §1915(e)(2). For the following reasons, the Court will recommend that the application to proceed in forma pauperis be denied and that this case be remanded to the Franklin County Municipal Court, Environmental Division.

I.

The removal of this specific action has already been addressed by Judge Holschuh in Case No. 2:07-cv-0287. In that case, Judge Holschuh found the removal of this action to be deficient and ordered remand because no federal question was presented on the face of the complaint and only two of the four individual defendants named in the original complaint joined in the removal, a violation of the "rule of unanimity." See Order filed June 19, 2007. Those basic facts remain unchanged. A

federal court's decision on an issue of jurisdiction, while not a merits disposition, is nonetheless binding on parties who seek a second adjudication based on the same set of facts. See, e.g., Stewart Securities Corp. v. Guaranty Trust Co., 597 F.2d 240, 242-3 (10<sup>th</sup> Cir. 1979).

## II.

Based on the foregoing, it is recommended that the request to proceed in forma pauperis be denied. It is further recommended that this case be remanded to the Franklin County Municipal Court, Environmental Division for the reasons set forth in the Order filed June 19, 2007 in Case No. 2:07-cv-0287.

### PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within ten (10) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. Section 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp  
United States Magistrate Judge